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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,247	09/29/2003	Donald E. Weder	8403.968	3184

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EXAMINER

PALO, FRANCIS T

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 11/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/674,247

**Applicant(s)**

WEDER, DONALD E.

**Examiner**

Francis T. Palo

**Art Unit**

3644



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Second Non-Final Office Action</u>     |

## **DETAILED ACTION**

### ***Drawings***

The drawings were received on 1/8/04. These drawings are accepted and approved except for the last sheet of Figures 13-15 and 17 which are different figures than the Formal Drawings with the same figure numbers.

### ***Specification***

The disclosure is objected to because of the following informalities:

Appropriate correction is required.

Paragraph [0001] should be updated to reflect the abandoned status of Application 10/195,030.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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**Claims 8-16, 20-22, 25-27, 30-32, 42-53 and 59-64** are rejected

under 35 U.S.C. 102(b), as being anticipated by Weder 5,029,412.

Regarding **independent claims 8 and 42**:

Weder discloses a flower pot cover (read as: a decorative sleeve, capable of positioning about a floral grouping, as cited in the preamble,) may be constructed of a combination of polymer film and cloth (column-2, lines 51-57), as cited in the instant independent claims.

Weder further discloses the cover may be constructed of a single layer of material or a plurality of layers of the same or different types of materials (column-3, lines 17-19), and Weder further teaches lamination (column-3, line-23), (also read as; connected, as cited).

Regarding **independent claims 10 and 45**:

Weder teaches a laminated material capable of being formed into a decorative cover;  
See the preceding discussion above.

Regarding **independent claims 13 and 49**:

Weder teaches a laminated material capable of being formed into a decorative cover;  
See the preceding discussion above.

Weder further teaches heat sealing or adhesively connecting (column-2, lines 38-41), and a bonding material as cited, would be an inherent lamination process.

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Regarding **independent claims 20-22, 59, 61 and 63:**

The laminate formed of a plurality of different types of materials as discussed above in the rejection of independent claims 8 and 42, is applicable to the three-layered sleeves cited in the instant independent claims.

Regarding **dependent claims 9, 11, 14, 43, 46 and 50:**

The discussions above regarding the independent claims are relied upon.

Weder teaches the cover may have any thickness (column-3, lines 19-21).

Regarding **dependent claims 25-27, 30-32, 44, 48, 53, 60, 62 and 64:**

The discussions above regarding the independent claims are relied upon.

Weder teaches decorative ornamentation to the cover (column-3, lines 53-66).

Regarding **dependent claims 12, 15, 47 and 51:**

The discussions above regarding the independent claims are relied upon.

Weder teaches polypropylene (column-3, lines 21-23).

Regarding **dependent claims 16 and 52:**

The discussions above regarding the independent claims are relied upon.

A four sided sheet of material having a bonding material disposed thereon as cited, would be inherent and encompassed by the plural layer constructions taught by Weder.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 4-7, 18, 19, 24, 29, 37-41 and 56-58** are rejected under 35 U.S.C. 103(a) as being unpatentable over Weder (US 5,029,412) 1991, in view of Celtorius (US Des. 419,436) 2000.

Regarding **independent claims 4, 18, 37 and 56**:

Weder discloses a flower pot cover (read as: a decorative sleeve, capable of positioning (wrapping) about a floral grouping, as cited in the preamble,) may be constructed of a combination of polymer film and cloth (column-2, lines 51-57), as cited in the instant independent claims.

Weder further discloses the cover may be constructed of a single layer of material or a plurality of layers of the same or different types of materials (column-3, lines 17-19), and Weder further teaches lamination (column-3, line-23), (also read as; connected, as cited).

Weder is silent as to a banding element as cited in the instant claims.

Celtorius teaches a banding element in combination with a flower bag.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have provided a banding element as taught by Celtorius and cited in the instant claims, to the cover of Weder, for the well-known advantages of that feature.

Regarding **dependent claims 5 and 38**:

The discussions above regarding the independent claims are relied upon.

Weder teaches the cover may have any thickness (column-3, lines 19-21).

Regarding **dependent claims 6 and 39**:

The discussions above regarding the independent claims are relied upon.

Weder teaches polypropylene (column-3, lines 21-23).

Regarding **dependent claims 7, 19, 40 and 57**:

The discussion above regarding the independent claims 4, 18, 37 and 56 is relied upon.

Celtorius teaches a ribbon as a banding element, as cited.

Regarding **dependent claims 24, 29, 41 and 58**:

The discussions above regarding the independent claims are relied upon.

Weder teaches decorative ornamentation to the cover (column-3, lines 53-66).

**Claims 1-3, 17, 23, 28, 33-36, 54 and 55** are rejected under 35 U.S.C. 103(a), as being unpatentable over Weder and Celtorius as applied to claims 4, 18, 37 and 56 above, and further in view of Windisch (WO 93/15979) 1993.

Regarding **independent claims 1, 17, 33 and 54**:

The preceding discussion above is relied upon.

Weder as modified is not specific to a cinching tab having a bonding material disposed thereon and crimping as cited in the instant claims.

Windisch teaches a laminate construction for transporting flowers in combination with a functionally equivalent resealable adhesive tape (read as; a cinching tab) attached to the outer surface of the wrapper (see page-3 of the translation, second-to-last paragraph).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have further modified the cover of Weder to incorporate a resealable adhesive tape as taught by Windisch, and cited in the instant claims, as further such modification is merely an alternate equivalent holding means performing the same intended function of maintaining the cover about the floral grouping.



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**Regarding dependent claims 2 and 34:**

The discussions above regarding the independent claims are relied upon.

Weder teaches the cover may have any thickness (column-3, lines 19-21).

**Regarding dependent claims 3 and 35:**

The discussions above regarding the independent claims are relied upon.

Weder teaches polypropylene (column-3, lines 21-23).

**Regarding dependent claims 23, 28, 36 and 55:**

The discussions above regarding the independent claims are relied upon.

Weder teaches decorative ornamentation to the cover (column-3, lines 53-66).

***Terminal Disclaimer***

The terminal disclaimer filed on 5/19/04 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Patent No. 5,829,194 has been reviewed and is accepted.

The terminal disclaimer has been recorded.

***Conclusion***

Newly added claims 23-32 are acknowledged, and upon further reconsideration and search, a second non-final office action is made for the Applicant's consideration.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595. The examiner can normally be reached on M-Tu.,Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



TERI PHAM LUU  
SUPERVISORY  
PRIMARY EXAMINER



Francis T. Palo  
Examiner  
Art Unit 3644